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Supreme Court, U.S.
FILED
AUG 27 2002
CLERK

No. 02-65

IN THE

Supreme Court of the United States

GREEN SPRING HEALTH SERVICES, INC., *et al.*,
Petitioners,

v.

PENNSYLVANIA PSYCHIATRIC SOCIETY,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY BRIEF FOR PETITIONERS

THOMAS S. BIEMER
DILWORTH PAXSON LLP
3200 Mellon Bank Center
1735 Market Street
Philadelphia, PA 19103
(215) 575-7025

CARLETON O. STROUSS
KIRKPATRICK & LOCKHART LLP
Payne Shoemaker Building
240 North Third Street
Harrisburg, PA 17101
(717) 231-4500

JOHN G. ROBERTS, JR.*
RONALD J. WILTSIE, II
CHRISTOPHER T. HANDMAN
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5810

GERRI L. SPERLING
SPRINGER BUSH & PERRY P.C.
2 Gateway Center—15th Floor
Pittsburgh, PA 15222
(412) 281-4900

*Counsel of Record

Counsel for Petitioners

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The decision below allows a professional association—which has suffered no injury to itself—to seek sweeping changes to Pennsylvania's managed-care industry not on behalf of itself, and not on behalf of its member-psychiatrists, but on behalf of its members' patients—a remote third-party constituency with whom the association shares absolutely no affiliation. That expansive view of Article III standing runs directly counter to this Court's established precedents that litigants in the federal courts must raise their own claims based on their own injuries. It does not fit within any of the narrow exceptions this Court has recognized. Rather, as Judge Nygaard pointed out in dissent, the decision below takes two distinct exceptions from this Court's standing jurisprudence and then "piggy-back[s]" them one on top of the other to create yet a third exception, effectively "swal-

low[ing] up the long-standing *rule* that litigants must assert their own rights and interests." Pet. App. 24a (emphasis in original).

Respondent attempts to obfuscate the important federal question presented here by raising a litany of procedural objections. It suggests that, even though the Court does so routinely, it is somehow inappropriate for this Court to review a decision issued at the Rule 12(b) stage of proceedings, Opp. 6-7; that we improperly raised a new separation-of-powers argument, *id.* at 12-14, even though this Court has held that a party may advance additional arguments supporting the same *claim* raised below, *see Yee* v. *City of Escondido*, 503 U.S. 519, 534 (1992); and that we have misrepresented the breadth of its claims, Opp. 15-16, even though PPS itself characterized its lawsuit before the District Court as one seeking "broad-based changes" to the way in which psychiatric managed care is administered. Pet. App. 36a. Respondent's reluctance to join issue on the question presented is understandable, since it concedes—as it must—that the Third Circuit reached its decision by "allow[ing] one level of associational standing and one level of third-party standing." Opp. 11. Although it labors mightily to demonstrate how this "piggy-backing" approach is consistent with this Court's standing jurisprudence, respondent's only support is an inapposite case neither it nor the Third Circuit ever cited below.

Unless corrected, the Third Circuit's unprecedented rule threatens to permit the sort of attenuated claims and generalized grievances that have long been considered outside the jurisdiction of the federal judiciary. This Court should grant the petition and reverse.

1. Respondent begins by protesting that it is "premature" for this Court to review the decision below because it is still theoretically possible that, upon remand, PPS will be unable to satisfy even the new, liberalized standing rule that

the Third Circuit announced. Review is therefore improper, PPS reasons, because "the underlying factual development could obviate the need to resolve the issue as presented." *Id.* at 7.

The question presented by the petition is whether the novel "piggy-backing" rule the Third Circuit announced contravenes, *as a matter of law*, this Court's established standing jurisprudence. No amount of discovery will help resolve that pure legal question. This Court routinely grants certiorari to review such legal questions arising from decisions—like the one below—that are issued at the Rule 12(b) or summary-judgment stages and in which the court of appeals has remanded for additional proceedings. *See, e.g.*, *Christopher* v. *Harbury*, 122 S. Ct. 2179, 2184-85 (2002); *Toyota Motor Mfg., Ky., Inc.* v. *Williams*, 122 S. Ct. 681, 688 (2002).

2. Respondent next points out that the Third Circuit's decision adopts the same rationale as decisions from the Sixth and the District of Columbia Circuits. Opp. 7-8. We recognized as much in the petition; the ruling here is not some passing apparition that can be safely dismissed. Pet. 22-23. Respondents go on to suggest that the lack of a direct circuit split precludes review. Not so. This Court has often granted certiorari, despite a lack of disagreement within the circuits, where the petition raised an important question of federal jurisdiction—particularly one involving Article III standing. *See, e.g.*, *Lexecon Inc.* v. *Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 32-33 (1998); *Valley Forge Christian College* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 470 (1982).

In *Valley Forge*, the court of appeals had held that a group of plaintiffs had "citizen standing" under the Establishment Clause to challenge a government transfer of property to a religious institution. Although there was no appreciable circuit split, this Court nonetheless granted certiorari "[b]ecause of the unusually broad and novel view of standing

to litigate a substantive question in the federal courts adopted by the Court of Appeals." *Valley Forge*, 454 U.S. at 470. Likewise, the "unusually broad and novel view of standing" adopted by the Third Circuit below warrants this Court's review.

In *Lexecon*, the court of appeals construed 28 U.S.C. § 1407(a), which governs the transfer authority of the Judicial Panel on Multidistrict Litigation, in a manner entirely consistent with every other decision from the federal courts of appeals. 523 U.S. at 32-33. Despite the absence of a circuit split, this Court nonetheless granted certiorari to review the important jurisdictional and procedural question presented. *Id.*

Here, the case for certiorari is even clearer. The question presented implicates the core functioning of the federal judiciary. As this Court has squarely held, the rule that "a litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties," is a "fundamental restriction" on the power of the federal judiciary. *Powers* v. *Ohio*, 499 U.S. 400, 410 (1991). The Third Circuit's expansive view of third-party standing threatens to do away with that fundamental limitation.

3. Moreover, as we argued in the petition (pp. 18-23), certiorari is particularly justified because the "fundamental limitation" the standing doctrine preserves is "built on a single basic idea—the idea of separation of powers." *Allen* v. *Wright*, 468 U.S. 737, 752 (1984). Respondents never suggest otherwise, but instead contend that we are precluded from invoking the separation of powers because we did not raise the argument below. Opp. 12-14.

PPS confuses *arguments* with *claims*. This Court has consistently held that "[o]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they

made below." *Yee* v. *City of Escondido*, 503 U.S. at 534. *See Lebron* v. *National R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995); *Bankers Life & Cas. Co.* v. *Crenshaw*, 486 U.S. 71, 78 n.2 (1988); *Illinois* v. *Gates*, 462 U.S. 213, 219-220 (1983); *Dewey* v. *City of Des Moines*, 173 U.S. 193, 197-198 (1899). The argument that the Third Circuit's decision threatens " 'the proper—and properly limited—role of the courts in a democratic society,' " *Bennett* v. *Spear*, 520 U.S. 154, 162 (1997) (quoting *Warth* v. *Seldin*, 422 U.S. 490, 498 (1975)), is "not a new claim within the meaning of [the] rule, but * * * support[s] what has been [our] consistent claim": that the Third Circuit's expansive view of third-party standing directly conflicts with this Court's standing jurisprudence. *Lebron*, 513 U.S. at 379.

PPS's only other response on the separation of powers (Opp. 15-16) is to deny that its lawsuit really does seek the type of systemic reforms that would force the federal judiciary "to decide abstract questions of wide public significance." *Warth* v. *Seldin*, 422 U.S. at 500. Here, PPS has done a dramatic about-face. Before the District Court, when it was attempting to demonstrate that its suit would not require undue individual participation of its members, PPS maintained that individual participation would be unnecessary because it was seeking "broad-based changes" to the way in which psychiatric managed care is delivered. Pet. App. 36a. And again before the Court of Appeals, PPS emphasized time and again that it sought to reform a "systemic practice" and a "systemic problem" and the "systemic nature" of that problem. Br. of PPS 19, 21, 23. These "broad-based" attacks on the managed-care industry are, as we demonstrated in the petition (pp. 21-22), precisely the sorts of "debatable social judgment[s]" that are typically best left to the legislature. *Pegram* v. *Herdrich*, 530 U.S. 211, 221 (2000). The Third Circuit's unprecedented standing rule threatens that delicate balance between the legislature and the judiciary.

4. Finally, PPS's effort to prove that the decision below is consistent with this Court's precedents effectively boils down to citing a single case, *New York State Club Ass'n* v. *City of New York*, 487 U.S. 1 (1988). Opp. 10-11. Tellingly, PPS never cited the decision in its briefs before the Third Circuit, nor did the Court of Appeals see fit to rely on it in reaching its decision. Presumably that is because the case is entirely distinguishable.

In *New York State Club*, this Court held that an association—whose membership comprised a number of private clubs—had standing to challenge an antidiscrimination statute on behalf of the paid members of those constituent clubs. 487 U.S. at 8-9. There is nothing remarkable about such a result; it makes perfect sense under this Court's associational-standing cases to allow one umbrella association to sue on behalf of the members of its member-associations. That is because the doctrine of associational standing is premised on the idea that "the association 'and its members are in every practical sense identical.' " *United Food & Commercial Workers Union Local 751* v. *Brown Group, Inc.*, 517 U.S. 544, 552 (1996) (quoting *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449, 459 (1958)). Under those circumstances there is no concern about whether "the interests [the organization] seeks to protect are germane to the organization's purpose." *Hunt* v. *Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977).

Here there is. The patients PPS purports to represent are *not* members of its membership, as in *New York Club*. Rather, they are third parties who have absolutely no ties to PPS. As we demonstrated in the petition (pp.15-16), there is good reason to suspect that a professional association dedicated to the welfare of psychiatrists might actually have an agenda different from its members' patients.

* * * *

For the foregoing reasons, and those in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

THOMAS S. BIEMER
DILWORTH PAXSON LLP
3200 Mellon Bank Center
1735 Market Street
Philadelphia, PA 19103
(215) 575-7025

CARLETON O. STROUSS
KIRKPATRICK & LOCKHART LLP
Payne Shoemaker Building
240 North Third Street
Harrisburg, PA 17101
(717) 231-4500

*Counsel of Record

JOHN G. ROBERTS, JR.*
RONALD J. WILTSIE, II
CHRISTOPHER T. HANDMAN
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
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SPRINGER BUSH & PERRY P.C.
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